

II. REMARKS

Claims 41-68 Stand Rejected Under 35 U.S.C. §112, Second Paragraph

In the Office Action, claims 69-75, 80-96 were rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Applicant respectfully disagrees.

According to MPEP 2173.05(e) (Lack of Antecedent Basis), a "claim is indefinite when it contains words or phrases whose meaning is unclear.... Obviously, however, the failure to provide explicit antecedent basis for terms does not always render a claim indefinite. If the scope of a claim would be reasonably ascertainable by those skilled in the art, then the claim is not indefinite. *Energizer Holdings Inc. v. Int'l Trade Comm'n*, 435 F.3d 1366, 77 USPQ2d 1625 (Fed. Cir. 2006) (holding that "anode gel" provided by implication the antecedent basis for "zinc anode"); *Ex parte Porter*, 25 USPQ2d 1144, 1145 (Bd. Pat. App. & Inter. 1992) ("controlled stream of fluid" provided reasonable antecedent basis for "the controlled fluid"). Inherent components of elements recited have antecedent basis in the recitation of the components themselves. For example, the limitation "the outer surface of said sphere" would not require an antecedent recitation that the sphere has an outer surface. See *Bose Corp. v. JBL Inc.*, 274 F.3d 1354, 1359, 61 USPQ2d 1216, 1218-19 (Fed. Cir. 2001) (holding that recitation of "an ellipse" provided antecedent basis for "an ellipse having a major diameter" because "[t]here can be no dispute that mathematically an inherent characteristic of an ellipse is a major diameter"). Moreover, the "mere fact that a term or phrase used in the claim has no antecedent basis in the specification disclosure does not mean, necessarily, that the term or phrase is indefinite. There is no requirement that the words in the claim must match those used in the specification disclosure. Applicants are given a great deal of latitude in how they choose to define their invention so long as the terms and phrases used define the invention with a reasonable degree of clarity and precision."

The Examiner previously indicated that the claim elements were readily ascertainable. Furthermore, in order to meet the adequate written description requirement, the applicant does not have to utilize any particular form of disclosure to describe the subject matter claimed, but "the description must clearly allow persons of ordinary skill in the art to recognize that [he or she] invented what is claimed." *In re Hayes Microcomputer Prod. Inc.*, 982 F.2d 1527, 1533-35, 25 U.S.P.Q.2d 1241, 1245-46 (Fed. Cir. 1992). See also *Purdue Pharma L.P. v. Fausling Inc.*, 230 F.3d 1320, 1322, 56 U.S. P.Q. 2d

1481 (Fed. Cir. 2000). The specification does not have to describe the invention using the same words as those used in the claims, as long as the skilled reader understands that the text, taken as a whole, conveys the same meaning. The reader of the specification would know immediately the structure needed to support and retain the portable dwelling of the present invention as the Applicant specifically refers to it as a tent throughout the specification. Those of ordinary skill in the art would understand the elements that comprise a tent.

As commonly quoted, an applicant's "specification need not describe the claimed invention in *ipsis verbis* to comply with the written description requirement." *Ex parte Sorenson*, 3 U.S.P.Q.2d 1462, 1463 (Bd. Pat. App. & Interf. 1987) (reversal of 35 U.S.C. § 112, ¶1 rejection of claims because one skilled in the art would have understood "imines" to have been intended for "amines" even though specification did not say so), citing *In re Edwards*, 568 F.2d 1349, 196 U.S.P.Q. 465 (C.C.P.A. 1978) (reversal of rejection of claims for polyol under 35 U.S.C. § 112, ¶1, because application entitled to filing date of parent application even though parent does not name the compound in *ipsis verbis*, since the "parent application provides adequate direction which reasonably leads persons skilled in the art to the later claimed compound." 568 F.2d at 1352, 196 U.S.P.Q. at 467); see also *Application of Eickmeyer*, 602 F.2d 974, 982, 202 U.S.P.Q. 655, 663 (C.C.P.A. 1979) (reversal of 35 U.S.C. § 112, ¶1 rejection on the basis that limitation "at an elevated temperature of at least about 56° C" is "fully described" in the specification and its parent applications).

Though applicant believes the Examiner is incorrect, claims 69-75 and 80-96 have been canceled to expedite prosecution. In cancelling the claims, the Applicant is **NOT** representing that the canceled claims are unpatentable, and is **NOT** acquiescing to the Examiner's position in any way. Applicant reserves the right to pursue the cancelled claims in a continuation application.

Claims 76 and 79 Stand Rejected Under 35 U.S.C. §103(a)

In the Office Action, claims 76 and 79 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 2,658,439 (hereinafter Royal). Applicant points out that the Royal reference calls for a climate control device with a system of conduits arranged beneath the ground..." (Col. 2, lns 37-40) The user does not have direct access to the climate control unit itself. In fact, the user must manipulate their car window in order to "control the amount of air conditioning medium delivered into the vehicle."

{Col. 4, Ins 12-15} Moreover, contrary to the Examiner's position, the Royal reference does not have a flange in general and a flange that is permanently affixable to a tent, in particular. Therefore, Applicant points out the Royal reference is not amenable to being modified to give the user direct access to the climate control unit or to have a flange that is permanently affixable to a tent. It is for this reason that Applicant requests the rejection be withdrawn.

Claims 77-78 Stand Rejected Under 35 U.S.C. §103(a)

In the Office Action, claims 77-78 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 2,658,439 (hereinafter Royal) in view of U.S. Patent 5,970,661 (hereinafter Bishop et al.). Applicant respectfully submits that contrary to the Examiner's contention, Bishop et al. emphatically states at column 4, lines 2-15, that "the weave of the fabric used must allow free passage of air so that a child can breath without difficulty through the fabric...[t]hat requirement **totally precludes** the use of plastic films and other impermeable sheets" (emphasis added). Moreover, the Bishop et al. reference teaches, "it is generally desirable to select a fabric that is at least semi-translucent to light so as to minimize any claustrophobic feelings of those playing in the structure." Therefore, by its own admission, the Bishop et al. reference is incompatible with the use of the materials outlined in the instant claims. Moreover, the reference discusses the extent of permeability being substantial as it points out that "the suitability of a particular fabric for use in this invention can be empirically determined through a simple test. Generally speaking if a person can breathe without difficulty through multiple layers, at least three, then the fabric is sufficiently permeable for use." Col. 4, lines 8-15) It is for the foregoing reasons it is respectfully submitted that Claims 77-88 are not unpatentably obvious over Royal in view of Bishop et al.

Claims 97, 100 and 102 Stand Rejected Under 35 U.S.C. §103(a)

In the Office Action, claims 97, 100 and 102, were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 5,970,661 (hereinafter Bishop et al.) in view of U.S. Patent 5,970,661 (hereinafter Heisler et al.). As stated above, the Bishop et al. reference is not a suitable reference as it lacks limitations of the present claims that cannot be added by other references without contradicting the aim of the invention. Additionally, as argued in previous amendments, the Examiner's suggestion that a climate control unit can be placed in the door of the Heisler et al. reference is a great

departure from the purpose articulated in the reference. Heisler et al. was designed to have air ventilation through the door, it is not possible to modify that reference to put a climate control unit in the door. It is for the foregoing reasons it is respectfully submitted that Claims 97, 100 and 102 are not unpatentably obvious over Bishop et al. in view of Heisler et al. and are, therefore, in condition for allowance.

Claims 98-99, 101 and 103 Stand Rejected Under 35 U.S.C. §103(a)

In the Office Action, claims 98-99, 101 and 103, were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 5,970,661 (hereinafter Bishop et al.) in view of U.S. Patent 5,970,661 (hereinafter Heisler et al.), further in view of U.S. Patent 6,796,896 (hereinafter Laiti). As stated above, neither the Bishop et al. or Heisler et al. references are suitable references as they lack individually and together the limitations of the present claims. It is respectfully submitted that Bishop et al. and Heisler et al. are not combinable without departing from the teachings of each of the references. Moreover, Applicant submits that even if combinable, Bishop et al. and Heisler et al. combined do not teach the presently claimed invention. Heisler et al. require a waterproof outer material and mesh inner door material. If the door were zipped shut, there would be no ventilation into the tent. Additionally, even if the tent door was open, the tent material does not meet the necessary requirement of Bishop et al., that "a child can breathe without difficulty through the fabric in the event that air flow...fails...." It should be kept in mind that material should not be considered a matter of design choice when the primary reference specifically teaches away from certain materials. This precludes the use of the materials in conjunction with Bishop et al. reference and would render any reference that suggests such materials uncombinable. The Bishop et al. reference requires a porous material and any material choice differing from that requirement, in the words of the patent itself, "precludes" its use. By requiring a permeable fabric, the Bishop et al. system could not adequately serve as a climate controlled dwelling, as the airflow generated by the fan would not necessarily overcome the ambient temperature of the air passing from the exterior of the apparatus. Moreover, even if combinable, the above discussion details why the Bishop et al. reference cannot serve as a primary 103(a) reference against the presently claimed invention. It is for the foregoing reasons it is respectfully submitted that Claims 98-99, 101 and 103 are not unpatentably obvious over Bishop et al. in view of Heisler et al. and/or Laiti and are, therefore, in condition for allowance.


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IV CONCLUSION

In view of the above, Claims 76-79 and 97-122 are pending and it is respectfully submitted that all of the pending claims in this application are in condition for allowance. Favorable action on this application is, therefore, solicited.

Respectfully submitted,

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